



May 3, 2001

Mr. William T. Buida
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR2001-1808

Dear Mr. Buida:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 146763.

The Texas Department of Human Services (the "department") received three requests for information, each of which seeks information pertaining to the timeliness of the department's processing of applications from individuals under age 65 who applied for Medicare Cost Sharing programs. Particular categories of requested information include: the date the applicant file was opened by the department; dates on which the department made a determination of eligibility or ineligibility; the budgeted job, case, or file numbers of applications for which the 45-day deadline for processing the application was not met; and a specified document titled "Application Disposition Report." You have submitted for our review documents which you indicate comprise representative samples of the records held by the department that contain information responsive to the requests. Among other arguments, you assert that the information in the types of sample records submitted for our review is excepted from disclosure under section 552.101 of the Government Code. One of the requesters has also submitted comments to this office. *See* Gov't Code § 552.304. We have considered the asserted exception and the submitted comments and have reviewed the submitted information.¹

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Initially, you state with respect to particular categories of the requests:

[The] department does not believe that it [is] obligated to research every applicant and recipient file to locate the documents, determine if the applicant or recipient is in [a] Medicare Savings program, determine if the particular information requested is in the documents, extract the information from the documents and provide the extracted information to the [requesters] in response to [specified categories of the requests].

We note that the department has a good faith duty to relate a request to information held by it. Open Records Decision No. 561 at 8 (1990). At least to the extent that the records have not been determined to be subject to an exception to required public disclosure, we believe this good faith duty requires a governmental body to make an exhaustive search for those records that contain information responsive to a request. Moreover, it has long been established that the difficulty of complying with a public information request is not a relevant factor in determining whether the responsive information is excepted from required public disclosure. *See, e.g., Industrial Found. v. Texas Industrial Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); *see also* Attorney General Opinion JM-672 (1987) (the difficulty or cost of complying with a public information request does not determine whether the information is available to the public). Thus, the fact that it would be difficult for the department to research its case files and locate those records that contain responsive information is irrelevant to whether such records are excepted from required public disclosure. At the same time, because it is implicit in several provisions of the Act that the Act applies only to information already in existence, the Act does not *require* a governmental body to prepare new information, *i.e.* create responsive information, in order to respond to a request made under the Act. *See* Gov't Code §§ 552.002, .021, .227, .351.; *see also* Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975). You state that the department is working with the requesters to address certain categories of the requests "by a report which shows how many applications were received and completed after the 45 day deadline[.]" We assume this report would contain information held by the department that was in existence at the time the department received the requests. You further represent that the department "believes that it can produce this type of aggregate information . . . without violating the federal and state confidentiality requirements." As no such report is contained in the submitted samples of responsive records, this decision does not address such a report. It appears that the department has determined that the sample submitted records are among the types of records held by the department that contain information responsive to the requests. Accordingly, this decision addresses the section 552.101 assertion only with respect to the submitted samples.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert that the information in the types of records submitted for our review is

confidential under section 552.101 in conjunction with federal and state law. Federal and state statutes prohibit the disclosure of information concerning clients of a state plan for medical assistance, except for a purpose directly connected with the administration of the plan. *See* 42 U.S.C. § 1396a(a)(7); Hum. Res. Code §§ 12.003, 21.012; Open Records Decision Nos. 584 (1991), 166 (1977). Section 12.003 of the Human Resources Code provides in relevant part:

(a) Except for purposes directly connected with the administration of the department's assistance programs, it is an offense for a person to solicit, disclose, receive, or make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of the names of, *or any information concerning*, persons applying for or receiving assistance if the information is directly or indirectly derived from the records, papers, files, or communications of the department or acquired by employees of the department in the performance of their official duties.

Hum. Res. Code § 12.003(a)(emphasis added). You represent that although the requests refer to Medicare, "the particular program is one in which Medicaid pays for Medicare participation on behalf of a Medicaid recipient. The person must be a Medicaid recipient." Based on this representation, we find that the above provisions of law apply to the applicant information at issue. The requesters have asserted that the information responsive to the requests is not excepted by section 552.101 because the requests specifically do not encompass any client identifying information, and such information may therefore be redacted from all responsive records. However, in Open Records Decision No. 584 (1991), this office concluded that "[t]he inclusion of the words 'or any information' juxtaposed with the prohibition on disclosure of the names of the department's clients clearly expresses a legislative intent to encompass the broadest range of individual client information, and not merely the clients' names and addresses." *Id.* at 3.² Consequently, it is the specific information pertaining to individual clients, and not merely the clients' identities, that is made confidential under section 12.003. *See also* Hum. Res. Code § 21.012 (a) (requiring provision of safeguards that restrict use or disclosure of information concerning applicants for or recipients of assistance programs to purposes directly connected with administration of programs). We have no indication that the release of the requested information would be for a purpose directly connected with the administration of the Medicaid program. The samples submitted for our review consist of Form 1200EZ (application for assistance),

²In Open Records Decision No. 584 (1991), this office construed section 602(a)(9) of title 42 of the United States Code, relating to state plans for aid and services to needy families with children. *See* ORD 584 at 1-2. Section 1396a of title 42, United States Code, provides in relevant part that "[a] state plan for medical assistance must . . . provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan[.]" 42 U.S.C. § 1396a(a)(7). Thus, the determinative language of section 1396a corresponds to that of section 602(a)(9), as interpreted in ORD 584.

Form 1000-A (case record copy), a document titled "Case Index Card," an "RG-31" printout (titled "Application Disposition Report"), and a memorandum attachment titled "Cases taking between 45 and 90 days - clients under age 65."³ All of these records contain information concerning clients. Based on your representations, we thus believe that the department must withhold these records pursuant to section 552.101 in conjunction with the above-stated provisions of federal and state law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

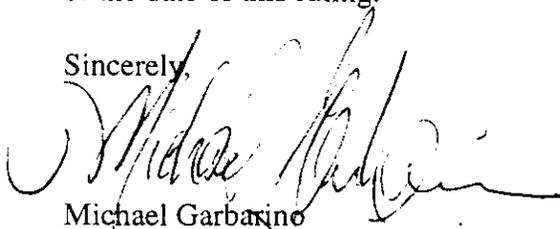
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

³This decision does not address the memorandum itself, as we understand this document has been released.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Garbarino
Assistant Attorney General
Open Records Division

MG/seg

Ref: ID# 146763

Encl. Submitted documents

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